

KILPATRICK TOWNSEND & STOCKTON LLP
 MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
 RYAN BRICKER (State Bar No. 269100)
 BYRON R. CHIN (State Bar No. 259846)
 Two Embarcadero Center, Suite 1900
 San Francisco, California 94111
 Telephone: (415) 576-0200
 Facsimile: (415) 576-0300
 Email: mboroumand@kilpatricktownsend.com
 rbricker@kilpatricktownsend.com
 bchin@kilpatricktownsend.com

KILPATRICK TOWNSEND & STOCKTON LLP
 MEGAN M. CHUNG (State Bar No. 232044)
 ERWIN L. CENA (State Bar No. 272960)
 12730 High Bluff Drive, Suite 400
 San Diego, California 92130
 Telephone: (858) 350-6100
 Facsimile: (858) 350-6111
 Email: mchung@kilpatricktownsend.com
 ecena@kilpatricktownsend.com

Attorneys for Plaintiff
 GOPRO, INC.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPRO, INC., a Delaware corporation,

 Plaintiff,

 v.
 360HEROS, INC., a Delaware corporation,

 Defendant.

Case No. 16-1944 (SI)

**REPLY DECLARATION OF BYRON R.
 CHIN IN SUPPORT OF GOPRO, INC.'S
 MOTION TO COMPEL**

Date: October 27, 2017
 Time: 9:00 a.m.
 Ctrm.: 1, 17th Floor
 Hon. Susan Illston

///
 ///
 ///
 ///
 ///

1 I, Byron R. Chin, upon personal knowledge or information and belief, state as follows:

2 1. I am an attorney and a member of the bar of the State of California. I am an associate
3 with Kilpatrick Townsend & Stockton LLP, and represent GoPro, Inc. in this litigation. I am over the
4 age of 18 and otherwise competent to make this declaration.

5 2. I make this declaration on my own knowledge, except where otherwise noted. If called
6 upon to testify regarding the contents of this declaration, I could and would competently testify to its
7 accuracy.

8 3. Attached as **Exhibit Y** is a true and correct copy of Plaintiff's Notice of Deposition of
9 Michael Kintner, dated July 11, 2017.

10 4. Attached as **Exhibit Z** is a true and correct copy of Defendant 360Heros, Inc.'s Ninth
11 Supplemental Response to Plaintiff GoPro's First Set of Requests for Production of Documents, dated
12 September 22, 2017.

13 5. Although 360Heros served its Ninth Supplemental Response to GoPro's Requests for
14 Production on September 22, 2017, because 360Heros sent the documents by mail, GoPro did not
15 receive them until September 27, 2017. This production contained four discrete documents:

- 16 • 360H-17183 to 17209 is a Distribution Agreement between 360Heros, Inc. and Manfrotto
17 Distribution, Inc., and was executed on February 7, 2017. This document contains the
18 revenue sharing arrangement between 360Heros and Manfrotto.
- 19 • 360H-17210 to 17213 is a vendor report and a set of purchase orders for Fresh View, with
20 the purchase orders dated between February and June 2017.
- 21 • 360H-17214 to 17230 is a set of purchase orders for Keystone Tool & Die, with the
22 purchase orders dated between April 2013 and February 2016.
- 23 • 360H-17231 to 17327 is a vendor report and a set of purchase orders for LCH, with the
24 purchase orders dated between October 2016 and September 2017.

25 6. I have reviewed the remainder of 360Heros' document production to GoPro. 360H-
26 02798 to 360H-9005 is a 6,208 page document containing only 360Heros invoices. 360H-08912 to
27 360H-15119 is a 6,208 page identical copy of 360H-02798 to 360H-09005.

CHIN REPLY DECL. ISO GOPRO, INC.'S MOTION TO COMPEL
Case No. 16-01944 (SI)

EXHIBIT Y

KILPATRICK TOWNSEND & STOCKTON LLP
 MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
 RYAN BRICKER (State Bar No. 269100)
 BYRON R. CHIN (State Bar No. 259846)
 Two Embarcadero Center, Suite 1900
 San Francisco, California 94111
 Telephone: (415) 576-0200
 Facsimile: (415) 576-0300
 Email: mboroumand@kilpatricktownsend.com
 rbricker@kilpatricktownsend.com
 bchin@kilpatricktownsend.com

KILPATRICK TOWNSEND & STOCKTON LLP
 MEGAN M. CHUNG (State Bar No. 232044)
 ERWIN L. CENA (State Bar No. 272960)
 12730 High Bluff Drive, Suite 400
 San Diego, California 92130
 Telephone: (858) 350-6100
 Facsimile: (858) 350-6111
 Email: mchung@kilpatricktownsend.com
 ecena@kilpatricktownsend.com

Attorneys for Plaintiff
 GOPRO, INC.

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

GOPRO, INC., a Delaware corporation,

 Plaintiff,

 v.
 360HEROS, INC., a Delaware corporation,

 Defendant.

Case No. 3:16-cv-01944-SI

**PLAINTIFF'S NOTICE OF DEPOSITION
 OF MICHAEL KINTNER**

Honorable Susan Illston
 Complaint filed April 13, 2016

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30, Plaintiff GoPro, Inc., by and through their attorneys, will take the deposition of Michael Kintner on July 25, 2017. The deposition will commence at 9:00 a.m. at Park Center Development, One Blue Bird Square in Olean, NY 14760. The deposition will take place upon oral examination before an officer duly authorized by law to administer oaths and record testimony. The testimony will be recorded by

1 stenographic means and will be videotaped. The deposition will continue from day to day if necessary
2 until completed or adjourned.

3
4 Dated: July 11, 2017

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

6
7 By: _____
Byron R. Chin

8 Attorneys for Plaintiff
9 GOPRO, INC.

PROOF OF SERVICE

I, Byron Chin, declare:

I am employed in the City and County of San Francisco, California; I am over the age of eighteen years and not a party to the within action; my business address is Kilpatrick Townsend & Stockton LLP, Two Embarcadero Center, Suite 1900, San Francisco, California 94111.

On the date set forth below, I served a true and accurate copy of the foregoing document entitled **PLAINTIFF'S NOTICE OF DEPOSITION OF MICHAEL KINTNER** on the parties in this action, as follows:

Attorneys for Defendant 360HEROS, INC.:

David A. Gauntlett
James A. Lowe
GAUNTLETT & ASSOCIATES
18400 Von Karman, Suite 300
Irvine, California 92612
Telephone: (949) 553-1010
Facsimile: (949) 553-2050
Email: info@gauntlettlaw.com
jal@gauntlettlaw.com

☒ [By E-Mail] I caused said document to be sent by electronic transmission to the e-mail addresses indicated for the parties listed above.

☐ [By First Class Mail] I am readily familiar with my employer's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document at my place of business, by placing a true copy thereof, enclosed in sealed envelope with postage thereon fully prepaid, addressed as set forth above, for collection and mailing with the United States Postal Service where said envelope would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressees.

☐ [By Hand Delivery] I directed each envelope to the parties so designated on the service list to be delivered by courier this date.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 11, 2017, at San Francisco, California.



Byron Chin

EXHIBIT Z

GAUNTLETT & ASSOCIATES

David A. Gauntlett (SBN 96399)

James A. Lowe (SBN 214383)

18400 Von Karman, Suite 300

Irvine, California 92612

Telephone: (949) 553-1010

Facsimile: (949) 553-2050

info@gauntlettlaw.com

jal@gauntlettlaw.com

Attorneys for Defendant

360HEROS, INC.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPRO, INC., a Delaware corporation,

Plaintiff,

vs.

360HEROS, INC., a Delaware corporation,

Defendant.

Case No.: 16-cv-01944-SI

Honorable Susan Illston

**DEFENDANT 360HEROS, INC.'S
NINTH SUPPLEMENTAL RESPONSE
TO PLAINTIFF GOPRO'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

1 Defendant 360Heros, Inc. hereby supplements its responses to Plaintiff's First Set of Request
2 for Production of Documents Nos. 9 and 27 pursuant to Rule 34 of the Federal Rules of Civil
3 Procedure and the Court's July 27, 2017 Order [Dkt. 80] subject to the following General
4 Objections.

5 **GENERAL OBJECTIONS**

6 1. 360Heros objects to Plaintiff's Definitions and Instructions to the extent those
7 Definitions and Instructions seek to impose obligations on 360Heros beyond that permitted under
8 Fed.R.Civ.P. 26 and 34 or under the Civil Local Rules for the Northern District of California.
9 360Heros responds to the First Set of Requests for Production to the extent required by the Federal
10 Rules of Civil Procedure and the applicable Civil Local Rules.

11 2. 360Heros objects to Plaintiff's Definitions, Instructions and Requests for Production
12 to the extent they seek disclosure of information protected from disclosure by the attorney client
13 privilege. Communications with 360Heros' attorneys or related to the advice of 360Heros' attorneys
14 are protected by the attorney-client privilege and 360Heros will not produce documents protected by
15 the attorney-client privilege. To the extent any Request seeks disclosure of information protected by
16 the attorney-client privilege, an objection is asserted on each such discovery request.

17 3. 360Heros objects to Plaintiff's Definitions, Instructions and Requests for Production
18 on the grounds that they seek documents that are protected by the attorney-work product doctrine, or
19 other applicable privileges or protections, and would require the disclosure of mental impressions,
20 conclusions, and theories of 360Heros' attorneys and other representatives or are otherwise immune
21 from discovery. 360Heros will not produce documents protected by the attorney-work product
22 doctrine or other applicable privileges or protections. To the extent any Request seeks disclosure of
23 information protected by the work product doctrine or another applicable privilege or immunity, an
24 objection is asserted on each such discovery request.

25 4. 360Heros objects to the Requests for Production to the extent any Request seeks
26 disclosure of trade secret or other proprietary or confidential research, development or commercial
27 information including highly confidential commercial information of 360Heros for which special
28 protection from public disclosure and from use for any purpose other than prosecuting this litigation

1 is warranted. To the extent a Request seeks disclosure of such information, 360Heros will respond
 2 and produce such information pursuant to the June 26, 2017 Protective Order entered in this Action
 3 (Dkt. 73) and the applicable Federal Rules of Civil Procedure.

4 5. 360Heros objects to the Requests for Production to the extent the Requests seek
 5 discovery beyond that allowed under the July 10, 2017 Stipulation and Order Regarding Discovery
 6 of Electronically Stored Information For Patent Litigation [Dkt. 78].

7 6. 360Heros' General Objections are applicable to, and included in, 360Heros' specific
 8 responses set forth below. 360Heros bases its responses and production of documents on its current
 9 knowledge, understanding and belief as to the facts and information available on the date of these
 10 responses and on documents located by 360Heros.

11 **NINTH SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION**

12 Each of the above General Objections is applicable to and included in 360Heros' specific
 13 responses set forth below. A specific response may repeat a General Objection for emphasis or some
 14 other reasons. The failure to include any General Objection in any specific response does not waive
 15 any General Objection to that Request.

16 **REQUEST NO. 9:**

17 All DOCUMENTS RELATING TO the design, research, development, testing, operation,
 18 manufacturing, and distribution of products and processes RELATING TO the alleged invention of
 19 the ASSERTED PATENT.
 20

21 **RESPONSE:**

22 Objection: Defendant objects to this Request No. 9 as overbroad and not proportional to the
 23 needs of the case because it requests "All Documents Relating To" which encompasses documents
 24 not relevant to any party's claim or defense and places no limitation on document custodians and
 25 data locations.

26 Objection: Defendant objects to this Request because it seeks disclosure of confidential
 27 commercial information of Defendant. Defendant will respond and produce such information
 28 pursuant to the June 26, 2017 Protective Order entered in this Action because this information would

unnecessarily provide Defendant's confidential commercial information to Plaintiff and its personnel.

Subject to and without waiver of objections, following a reasonable search by Defendant for documents in its possession, custody or control, Defendant identifies the following additional nonprivileged documents related to "distribution and manufacturing" responsive to this Request: 360H 17183-17237.

Subject to and without waiver of objections, Defendant has produced all non-privileged responsive documents currently in its possession for Request No. 9.

REQUEST NO. 23:

All DOCUMENTS RELATING TO the design, development, and manufacturing of products or processes that 360Heros contends embodies any claim of the ASSERTED PATENT regardless of whether such products or processes were actually marketed or sold.

RESPONSE:

Objection: Defendant objects to this Request No. 23 as overbroad and not proportional to the needs of the case because it requests "All Documents Relating To" which encompasses documents not relevant to any party's claim or defense and places no limitation on document custodians and data locations.

Subject to and without waiver of objections, following a reasonable search by Defendant for documents in its possession, custody or control, Defendant identifies the following nonprivileged documents related to "manufacturing" responsive to this Request: 360H 17183-17237.

Subject to and without waiver of objections, Defendant has produced all non-privileged responsive documents currently in its possession for Request No. 23.

REQUEST NO. 25:

All DOCUMENTS describing the sale, offer for sale, revenues, costs, or profits of any products or processes of 360Heros that 360Heros contends practices or embodies any claim of the ASSERTED PATENT.

RESPONSE:

Objection: Defendant objects to this Request No. 25 as overbroad and not proportional to the

1 needs of the case because it requests "All Documents" which encompasses documents not relevant to
2 any party's claim or defense and places no limitation on document custodians and data locations.

3 Objection: Defendant objects to this Request because it seeks disclosure of highly
4 confidential commercial information of Defendant.

5 Subject to and without waiver of objections, Defendant already produced confidential
6 attorneys' eyes only documents: 360H 8911-15143, 360H 15268-15271; and 360H 15756-15759.
7 Following additional reasonable search by Defendant for documents in its possession, custody or
8 control, Defendant identifies the following nonprivileged documents responsive to this Request:
9 360H 17183-17237.

10 Subject to and without waiver of objections, Defendant has produced all non-privileged
11 responsive documents currently in its possession for Request No. 25.

12 **REQUEST NO. 27:**

13 All DOCUMENTS sufficient to IDENTIFY any third parties that 360Heros uses in the
14 design, development, testing, manufacture, sale, distribution, advertisement, and marketing of
15 products that 360Heros contends practice or embody claims of the ASSERTED PATENT.

16 **RESPONSE**

17 Objection: Defendant objects to this Request No. 27 as overbroad and not proportional to the
18 needs of the case because it requests "All documents" which encompasses documents not relevant to
19 any party's claim or defense and places no limitation on document custodians and data locations.

20 Subject to and without waiver of objections, following a reasonable search by Defendant for
21 documents in its possession, custody or control, Defendant identifies the following additional
22 nonprivileged documents related to "distribution," "manufacture" and "marketing" responsive to this
23 Request: 360H 17183-17237.

24 Subject to and without waiver of objections, Defendant has produced all non-privileged
25 responsive documents currently in its possession for Request No. 27.

26 **REQUEST NO. 93:**

27 All organizational charts and other documents sufficient to identify the persons within
28 360Heros, including current and former employee and consultants, involved in the design,

development, testing, manufacture, quality control, marketing, sale, licensing, and distribution of products or processes RELATING TO the subject-matter of the ASSERTED PATENT.

RESPONSE

Objection: Defendant objects to this Request No. 93 as overbroad and not proportional to the needs of the case because it requests documents not relevant to any party's claim or defense and places no limitation on document custodians and data locations.

Objection: Defendant objects to this Request because it seeks proprietary confidential commercial information of Defendant.

Subject to and without waiver of objections, Defendant previously produced the following confidential documents (in Third Suppl. Response): 360H 8891, 360H 15204. Following a reasonable search by Defendant for documents in its possession, custody or control, Defendant identifies the following additional nonprivileged documents related to "distribution and manufacture" responsive to this Request: 360H 17183-17237.

Subject to and without waiver of objections, Defendant has produced all non-privileged responsive documents currently in its possession for Request No. 93.

Dated: September 22, 2017.

GAUNTLETT & ASSOCIATES

By: 

David A. Gauntlett
James A. Lowe

Attorneys for Defendant,
360HEROS, INC.

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: Gauntlett & Associates, 18400 Von Karman, Suite 300, Irvine, California 92612.

On September 22, 2017, the undersigned served the foregoing document described as: **DEFENDANT 360HEROS, M INC.'S NOTICE OF RULE 30(b)(6) DEPOSITION TO PLAINTIFF GOPRO, INC.** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

<p>Mehrnaz Boroumand Smith, Esq. <u>mboroumand@kilpatricktownsend.com</u> Ryan T. Bricker, Esq. <u>rbricker@kilpatricktownsend.com</u> Bryan Chin, Esq. <u>bchin@kilpatricktownsend.com</u> KILPATRICK TOWNSEND & STOCKTON LLP Two Embarcadero Center, Suite 1900 San Francisco, CA 94111</p> <p>Erwin Cena, Esq. <u>ecena@kilpatricktownsend.com</u> Megan Chung, Esq. <u>mchung@kilpatricktownsend.com</u> KILPATRICK TOWNSEND & STOCKTON LLP 12730 High Bluff Dr., #400 San Diego, CA 92130</p>	<p>Attorneys for Plaintiff, GoPro, Inc.</p>
--	--

[X] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

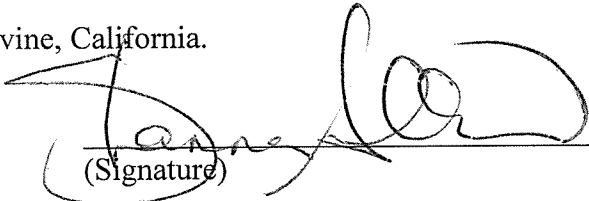
[X] (BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION) I caused the document to be sent to the respective e-mail addresses of the parties as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] (FEDERAL) I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 22, 2017, at Irvine, California.

Shannon Allison
 (Print Name)


 (Signature)